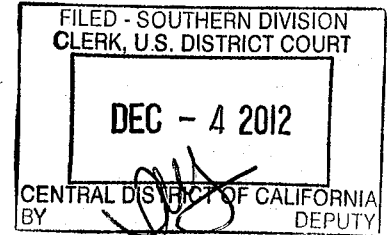


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY *Petitioner*
FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD IN THIS ACTION ON THIS DATE.

DATED: 12-4-12
[Signature]
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

THELLAS SANDERS,
Petitioner,
v.
STATE OF CALIFORNIA,
Respondent.

Case No. EDCV 12-1793-MLG

MEMORANDUM OPINION AND ORDER
DENYING PETITION; ORDER DENYING
CERTIFICATE OF APPEALABILITY

I. Background

A. Procedural History

Petitioner was found guilty by a Riverside County Superior Court jury of making criminal threats (Cal. Penal Code § 422) and inflicting corporal injury upon a spouse (Cal. Penal Code § 273.5(a)).¹ (Lodgment 1.) The trial court found that Petitioner had suffered a prior prison term (Cal. Penal Code § 667.5(b)); a prior

¹ Petitioner was also charged with possession of a firearm by a felon (Cal. Penal Code § 12021(a)(1)) and illegal possession of ammunition (Cal. Penal Code § 12316(b)(1)). Because the jury was unable to reach a verdict, the trial court declared a mistrial as to these two counts.

1 strike conviction (Cal. Penal Code §§ 667(c)-(e)(1), 1170.12(c)(1));
2 and a prior serious felony conviction, (Cal. Penal Code § 667(a)).
3 Petitioner was sentenced to a prison term of 11 years. (Lodgment 1
4 at 163-64, 372-73, 392-93; Lodgment 2 at 717-18.)

5 On November 1, 2010, Petitioner appealed to the California Court
6 of Appeal, alleging the following claims for relief: (1) the trial
7 court erred in excluding documents that the victim (Petitioner's
8 wife) had filed in various family court proceedings, which violated
9 his constitutional right to confrontation, and (2) the trial court
10 erred in denying Petitioner's motion to dismiss a prior strike
11 conviction. (Lodgment 3.) On February 14, 2012, the court of appeal
12 affirmed the judgment in a reasoned decision on the merits. (Lodgment
13 5.) On March 29, 2012, Petitioner filed a petition for review in the
14 California Supreme Court, which was summarily denied on May 9, 2012.
15 (Lodgments 6, 7.)

16 The current petition was filed in this Court on August 13, 2012,
17 raising the same two claims for relief presented in Petitioner's
18 direct appeal. On November 16, 2012, Respondent filed an answer. On
19 November 29, 2012, Petitioner filed a reply. The matter is ready for
20 decision.²

21 **B. Facts**

22 The underlying facts are taken from the unpublished opinion of
23 the California Court of Appeal. *People v. Thellas Sanders III*, No.
24 D060009 (California Court of Appeal) (Lodgment 5). Unless rebutted
25 by clear and convincing evidence, these facts are presumed correct.
26 *Tilcock v. Budge*, 538 F.3d 1138, 1141 (9th Cir. 2008), cert. denied,
27

28 ² The parties have consented to the exercise of jurisdiction by the
magistrate judge. 28 U.S.C. § 636(c). (Dkt. No. 11, 14)

1 --- U.S. ----, 129 S.Ct. 926 (2009) (citations omitted); *Diaz v.*
2 *Hedgpeth*, 2011 WL 6109619 *1 (C.D. Cal. Oct. 24, 2011); 28 U.S.C. §§
3 2254 (e)(1). In all quoted sections of this Report, the term
4 "Petitioner" is substituted for "Defendant."

5 Shikira and Petitioner began dating in November 2006. On
6 February 16, 2008, the couple got married in Las Vegas.
7 Shikira and Petitioner had an argument on the night after
8 their wedding. Petitioner punched Shikira in the stomach,
9 threw her against a wall, and choked her. Shikira and
10 Petitioner resolved their dispute and left Las Vegas together
11 the following day.

12 After the Las Vegas trip, Petitioner moved into Shikira's
13 residence in San Bernardino. Petitioner physically assaulted
14 Shikira approximately once a month during the time they were
15 living in San Bernardino. Petitioner would slap and choke
16 Shikira, causing bruises and marks on her body. Shikira would
17 conceal the injuries with clothing and makeup. In June 2008,
18 Petitioner was arrested after he threw a box of hot fried
19 chicken at Shikira and punched her in the face and chest.
20 Shikira filed for divorce in November 2008, but did not
21 complete the process. Instead, Shikira and Petitioner
22 purchased a house in Beaumont (Beaumont property or Beaumont
23 house) and moved to Beaumont in March 2009.

24 One evening in mid-April 2009, Petitioner stayed out
25 until 6:00 a.m. When he returned home, Shikira told Petitioner
26 that it was unacceptable for him to stay out so late. The
27 couple began to argue. Petitioner kicked Shikira, slapped her
28 in the face, and repeatedly punched her. Shikira, who was

1 approximately five months pregnant with Petitioner's child at
 2 the time, begged him to stop, and curled up in a fetal
 3 position to protect the fetus. Petitioner said, "I don't give
 4 a fuck if you are pregnant," and continued to punch Shikira in
 5 her back, sides, thighs, and arms. Shikira told Petitioner
 6 that she was going to call the police. Petitioner threatened
 7 to kill her or to have someone else kill her. Petitioner then
 8 left the house. Petitioner returned several hours later,
 9 pointed a black handgun at Shikira, and said to her, "Don't
 10 you know I will kill you? I will kill you and the kids."

11 In May 2009, while Petitioner was out of town, Shikira
 12 discovered a number of sexually explicit photographs. One of
 13 the photographs depicted Petitioner engaged in a sexual act
 14 with another woman and another man. Shikira called Petitioner
 15 and told him she intended to seek a divorce. After this
 16 incident, Petitioner began to make threatening telephone calls
 17 to Shikira. Shikira obtained a restraining order against
 18 Petitioner, which police served on Petitioner on May 17, 2009.
 19 In late May 2009, Shikira reported Petitioner's abuse and
 20 threats to police.³

21 (Lodgment 2 at 3-5.)

22 23 **II. Standard of Review**

24 Under the Antiterrorism and Effective Death Penalty Act of 1996
 25 ("AEDPA"), federal habeas corpus relief is available to state
 26

27 ³ Some facts, primarily those related to the firearm and ammunition
 28 charges on which the jury did not reach a verdict, have been omitted
 because they are immaterial to resolution of the instant petition.

1 prisoners who are in custody "in violation of the Constitution or
2 laws or treaties of the United States." 28 U.S.C. § 2254(a). To
3 establish a right to relief, a petitioner must show that the state's
4 highest court rejected the petitioner's claim on the merits, and that
5 this rejection was "contrary to, or involved an unreasonable
6 application of, clearly established Federal law, as determined by the
7 Supreme Court of the United States," or was "based on an unreasonable
8 determination of the facts in light of the evidence presented in the
9 State court proceeding." *Id.* § 2254(d); *Harrington v. Richter*, ---
10 U.S. ---, 131 S.Ct. 770, 783-84 (2011). These standards apply
11 regardless of whether the state court explained its reasons for
12 rejecting a prisoner's claim. *Richter*, 131 S.Ct. at 784.

13 It is not enough that a federal court conclude "in its
14 independent judgment" that the state court decision is incorrect or
15 erroneous. *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004) (quoting
16 *Woodford v. Visciotti*, 537 U.S. 19, 24-25 (2002) (per curiam)). "The
17 state court's application of clearly established law must be
18 objectively unreasonable." *Lockyer v. Andrade*, 538 U.S. 63, 75
19 (2003); see also *Renico v. Lett*, --- U.S. ---, 130 S.Ct. 1855, 1865
20 (2010). AEDPA imposes a "'highly deferential standard for evaluating
21 state-court rulings; which demands that state-court decisions be
22 given the benefit of the doubt." *Bell v. Cone*, 543 U.S. 447, 455
23 (2005) (quoting *Woodford*, 537 U.S. at 24); *Vasquez v. Kirkland*, 572
24 F.3d 1029, 1035 (9th Cir. 2009).

25 Habeas corpus relief is unavailable if "fairminded jurists could
26 disagree" about the correctness of the state court decision. *Richter*,
27 131 S.Ct. at 786 (quoting *Yarborough*, 541 U.S. at 664) (internal
28 quotation marks omitted). For habeas relief to be granted, "a state

1 prisoner must show that the state court's ruling on the claim being
2 presented in federal court was so lacking in justification that there
3 was an error well understood and comprehended in existing law beyond
4 any possibility for fairminded disagreement." *Id.* at 786-87.

5 The California Supreme Court did not issue a reasoned decision
6 in this case. Therefore, this Court must "look through" that summary
7 denial to the California Court of Appeal's reasoned decision
8 affirming the judgment to determine whether the state court decision
9 is contrary to, or an unreasonable application of, clearly
10 established federal law. *See Mendez v. Knowles*, 556 F.3d 757, 767
11 (9th Cir. 2009) (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04
12 (1991)).

13 14 **III. Discussion**

15 **A. Ground One: Exclusion at Trial of Documents Related to** 16 **Family and Civil Court Proceedings**

17 In ground one, Petitioner contends that the trial court erred
18 in excluding documents that Shikira had filed in various family court
19 and civil proceedings, and improperly restricted Petitioner's cross-
20 examination of Shikira regarding these documents. Petitioner argues
21 that his due process rights and right to confrontation were violated.
22 (Pet. at 6.) However, the state courts' rejection of Petitioner's
23 claim was neither contrary to nor an unreasonable application of
24 clearly established federal law.

25 **1. Factual Background**

26 Prior to trial, Petitioner filed a motion in limine requesting
27 that he be permitted to introduce into evidence "numerous documents"
28 that Shikira filed in various family court and civil proceedings

1 involving Petitioner, which resulted in Shikira being awarded
2 possession of the marital home in Beaumont California.⁴ At a hearing
3 on the motion, the prosecutor objected, claiming that the documents
4 were confusing and not relevant. After the documents were described
5 and argument heard, the Court stated: "So if I understand you
6 correctly, your argument or your position is, then, she has fabricated
7 all of this stuff about the physical abuse and the gun because she
8 wants to get the Beaumont property in her own name." Defense counsel
9 responded, "That's correct."

10 The trial court first observed that many of the documents were
11 not necessary to establish this contention. The Court stated that
12 counsel would be permitted to ask Shikira in general terms about
13 whether she had tried to obtain title to the property in her own name.
14 However, the documents were found not to be relevant. The trial court
15 noted that the documents might become relevant for impeachment
16 purposes, but declined to decide that issue prior to trial.

17 During direct examination, the prosecutor questioned Shikira
18 about whether she would receive anything of benefit if Petitioner was
19 successfully prosecuted. She responded, "No." Shikira stated that she
20 had been awarded the Beaumont property in the parties' martial
21 dissolution proceeding and that her current testimony would not affect
22 that decision.

23
24
25 ⁴ Among the documents that the defense sought permission to
26 introduce were documents entitled: Complaint to Quiet Title, Loan
27 Document Worksheet, DV-100 Request for Order, Notice of Lis Pendens,
28 Uniform Trade Certificate, Mechanic's Lien, Affidavit of Adverse Claim
to Land and Title, Petition for Dissolution of Marriage, Petitioner's
Community and Quasi-Community Property Declaration, Request to Enter
Default, Declaration for Default of Uncontested Dissolution, Notice of
Entry of Judgment, Judgment of Dissolution, and Marital Settlement
Agreement/Addendum.

1 Before conducting cross-examination, defense counsel again raised
2 the question of the admissibility of the family court documents. He
3 informed the trial court that he wanted to question Shikira about
4 whether she had sought and been awarded 100% of the Beaumont property.
5 The trial court agreed to allow that questioning, but reiterated that
6 it did not want any inquiry into the reasoning or basis for the family
7 court's decision. On cross-examination, Shikira answered that she had
8 sought and received the Beaumont property in the divorce case. Shikira
9 also acknowledged participating in the signing of papers for a loan
10 application on the Beaumont property, but denied that her testimony
11 at the criminal trial benefitted her in any way.

12 In closing argument, defense counsel repeatedly argued that it
13 was reasonable to conclude that Shikira made up her trial testimony
14 in order to gain sole ownership of the home. The prosecutor's
15 objections to those arguments were overruled. However, the trial court
16 sustained an objection to defense counsel's argument that the
17 testimony showed that Shikira had financially gained from the criminal
18 prosecution, as it was not supported by the evidence. (Lodgment 5 at
19 7-14).

20 2. Decision of the Court of Appeal

21 The court of appeal first rejected Petitioner's argument that
22 the trial court erred in precluding him from offering into evidence
23 the documents that showed that Shikira had requested that the family
24 court award her sole ownership of the Beaumont property. The court
25 of appeal concluded that the documents were merely cumulative of
26 Shikira's testimony on cross-examination that she had in fact
27 requested sole possession of the Beaumont property in the family
28 court proceedings, and therefore the documents were properly excluded

1 under Evidence Code section 352.⁵ The court of appeal also noted that
2 the trial court allowed defense counsel to argue in closing argument
3 that Shikira had falsely accused Petitioner of the charged offenses
4 in order to obtain the Beaumont property. (Lodgment 5 at 17-18.)

5 The court of appeal also rejected Petitioner's argument that the
6 trial court erred in refusing to admit the Complaint to Quiet Title,
7 which Petitioner argued would have established that Shikira committed
8 perjury by falsely claiming that Petitioner committed fraud in
9 obtaining the loan to purchase the Beaumont property. The court of
10 appeal noted that the trial court had repeatedly stated that it would
11 allow admission of any of the documents Petitioner sought to enter
12 into evidence if necessary for impeachment purposes, but that defense
13 counsel never sought to impeach Shikira with the Complaint to Quiet
14 Title. The court of appeal also determined that, contrary to
15 Petitioner's contention, the trial court did not prevent Petitioner
16 from cross-examining Shikira regarding the alleged false statements
17 she made in the Complaint to Quiet Title; rather defense counsel
18 never specifically asked her whether she lied in the family court
19 proceedings. The court of appeal concluded that the trial court did
20 not violate Petitioner's constitutional right to confront witnesses.
21 (Lodgment 5 at 19-21.)

22 3. Analysis

23 As a preliminary matter, to the extent that Petitioner contends
24 that the trial court violated California Evidence Code § 352 by
25 excluding the family and civil court documents, he has failed to
26

27 ⁵ California Evidence Code § 352 provides, "The court in its
28 discretion may exclude evidence if its probative value is substantially
outweighed by the probability that its admission will (a) necessitate
undue consumption of time or (b) create substantial danger of undue
prejudice, of confusing the issues, or of misleading the jury."

1 state a cognizable federal habeas claim. Federal courts may grant a
2 writ of habeas corpus only if the petitioner's conviction or sentence
3 is in "violation of the Constitution or laws or treaties of the
4 United States." 28 U.S.C. § 2254(a). Errors in the application of
5 state law are not cognizable on habeas review. *Estelle v. McGuire*,
6 502 U.S. 62, 67-68 (1991).

7 Petitioner's claim that the exclusion of the documents violated
8 his right to present a defense under the due process clause is
9 likewise without merit. "[T]he Constitution guarantees criminal
10 defendants a 'meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (internal citations
11 omitted). However, this right is not unlimited, and federal habeas
12 relief is warranted only if the exclusion of favorable defense
13 evidence rendered the trial fundamentally unfair. *Moses v. Payne*, 555
14 F.3d 742, 757 (9th Cir. 2009). When evidence is excluded on the basis
15 of a valid application of a state evidentiary rule, such exclusion
16 may violate due process only if the evidence is sufficiently reliable
17 and crucial to the defense. *Chambers v. Mississippi*, 410 U.S. 284,
18 302 (1973). In general, however, there must be "unusually compelling
19 circumstances . . . to outweigh the strong state interest in
20 administration of its trials." *Perry v. Rushen*, 713 F.2d 1447, 1452
21 (9th Cir. 1983).
22

23 Here, it cannot be said that the family and civil court
24 documents were crucial to Petitioner's defense. The trial court
25 reasonably found that most of these documents were irrelevant to any
26 issue at trial and would consume too much time. The trial court did,
27 however, repeatedly inform Petitioner that he was permitted to use
28 any of the documents for impeachment purposes. Petitioner has failed

1 to offer any convincing argument as to how the excluded documents
2 would have been useful to his defense if introduced. Thus, there was
3 no arbitrary exclusion of material or relevant evidence.

4 Petitioner also argues that the trial court's refusal to admit
5 the documents limited Petitioner's right to impeach Shikira and
6 violated his right to confrontation. (Pet. at 6.) The Sixth Amendment
7 provides that a criminal defendant has the right to confront the
8 witnesses against him. U.S. Const. amend. VI; *Crawford v. Washington*,
9 541 U.S. 36 (2004); *Maryland v. Craig*, 497 U.S. 836, 845-46 (1990)
10 (explaining that "[t]he central concern of the Confrontation Clause
11 is to ensure the reliability of the evidence against a criminal
12 defendant by subjecting it to rigorous testing in the context of an
13 adversar[ial] proceeding before the trier of fact").

14 Petitioner's Sixth Amendment right to confrontation was not
15 violated by the trial court's exclusion of the documents Petitioner
16 sought to introduce. Although the trial court refused to admit the
17 family court documents as direct evidence, the trial court stated
18 that defense counsel could "fully" cross examine Shikira about her
19 motivation for testifying and about obtaining the Beaumont house in
20 her name. The trial court also allowed defense counsel to use any of
21 the family court documents during cross-examination to impeach
22 Shikira if she gave any statement that was contrary to or
23 inconsistent with the information contained in those documents. (1
24 Reporter's Transcript ("RT") at 37, 39-40, 43; 2 RT at 210, 213, 216,
25 221-222). However, as noted by the court of appeal, defense counsel
26 never specifically asked Shikira on cross-examination whether she had
27 lied in the family court proceedings nor sought to impeach her
28 testimony by offering into evidence any of the family court

1 documents. (Lodgment 5 at 18-21.) In addition, the trial court
2 allowed defense counsel to argue in closing that Shikira had lied
3 about the abuse in order to obtain the Beaumont house. (4 RT at 626,
4 627-28, 651-52.) Accordingly, the trial court did not violate
5 Petitioner's Sixth Amendment right to confrontation.

6 **B. Ground Two: Failure to Strike Prior Conviction**

7 In California, trial courts have the discretion to dismiss prior
8 convictions that qualify as "strikes" under California's Three
9 Strikes law. *People v. Superior Court (Romero)*, 13 Cal. 4th 497, 529-
10 30 (1996); *People v. Williams*, 17 Cal.4th 148, 161 (1998); Cal. Penal
11 Code § 1385. Petitioner contends that the trial court erred in
12 denying his motion to "strike" a prior conviction pursuant to
13 California Penal Code section 1385. This claim fails to allege a
14 cognizable claim for federal habeas relief.

15 Matters relating to sentencing are generally governed by state
16 law and do not raise a federal constitutional question. See *Miller*
17 *v. Vasquez*, 868 F.2d 1116, 1118-19 (9th Cir. 1989); *Middleton v.*
18 *Cupp*, 768 F.2d 1083, 1085 (9th Cir. 1985); *Sturm v. California Adult*
19 *Authority*, 395 F.2d 446, 448 (9th Cir. 1967); *Jaime v. Almager*, 2009
20 WL 2390853 at *17 (C.D. Cal. 2009). Petitioner's contention that the
21 trial court improperly exercised its discretion under state
22 sentencing law does not allege a cognizable claim for federal habeas
23 corpus relief. See *Estelle*, 502 U.S. at 68; *Brown v. Mayle*, 283 F.3d
24 1019, 1040 (9th Cir. 2002), *vacated on other grounds*, 538 U.S. 901
25 (2003) (claim that trial court abused its discretion by failing to
26 strike prior conviction alleged under Three Strikes Law not
27 cognizable on federal habeas review); *Mercadel v. Trimble*, 2012 WL
28 4349313 at *8, (C.D. Cal. Aug. 29, 2012) (same); *Briones v. Sisto*,

1 2009 WL 1460826, at *6 (E.D.Cal. 2009) (same).

2 Here, Petitioner's claim for habeas relief is based on the
3 superior court's failure to exercise its discretion to strike a prior
4 conviction pursuant to California Penal Code section 1385 and *Romero*.
5 Petitioner does not present a federal constitutional question, and
6 his claim is not cognizable on federal habeas review. *Brown*, 283 F.3d
7 at 1040.

8
9 **IV. Conclusion**

10 For the reasons discussed above, the petition for writ of habeas
11 corpus is DENIED.

12
13 **CERTIFICATE OF APPEALABILITY**

14 A certificate of appealability will not issue. Reasonable
15 jurists would not find the denial of the petition debatable or wrong.
16 *Gonzalez v. Thayer*, 132 S.Ct. 641, 648 (2012); *Slack v. McDaniel*, 529
17 U.S. 473, 484 (2000).

18
19 Dated: December 4, 2012

20
21
22 **MARC L. GOLDMAN**

23 Marc L. Goldman
24 United States Magistrate Judge
25
26
27
28